

ESCAMBIA COUNTY ALABAMA
EVICTION / UNLAWFUL DETAINER PROCEDURE

(pursuant to 35-9-1, et seq., 35-9A-101, et seq., and 6-6-310, et seq., Code of Alabama)

These *simplified procedural instructions* are a courtesy of this county’s Circuit Clerk. It is important to understand the implications of self-representation, for by doing so, you are acting as your own lawyer and **YOU are accepting full responsibility** in seeing that your claim is successfully presented at each stage of the procedure until it is concluded.

PRIOR to filing an Eviction/Unlawful Detainer with the court, the landlord must give the tenant(s) a written ***Notice of Termination***. This notice may be delivered to the tenant(s), in person, by certified mail, and/or by securely posting the notice at the entry to the premises. Any of these actions must be approved and endorsed/signed by the landlord. The notice must ***identify the tenant(s), provide a description of the premises (full address), and state the reason for the termination***, (ie: amount of monetary deficiency, violation(s) of rental agreement, or termination of tenancy).

In Alabama the reasons for a Notice of Termination are listed as follows, and the Clerk’s Office offers these notices for your use or you may draw up your own if it includes the name(s), full address, and required action to cure or reason for termination.

If the breach is for **non-payment** of rent (*form a*), a seven(7) day notice is adequate. The 7 day period is counted in **business** days, (*do not count weekends or State Holidays*). The day the notice is given is not counted.

If the breach is for **non-compliance(s)** other than non-payment of rent (*form b*), a fourteen(14) day notice is required. The 14 day period is counted in calendar days, and the day the notice is given is not counted.

If the breach is for **non-compliance(s) due to certain criminal charges** (*form c*), a seven(7) day notice is required. The 7 day period is counted in calendar days, and the day the notice is given is not counted.

If a **Month-to-Month tenancy** is being terminated by the landlord (*form d*), a thirty(30) day notice is required. The 30 day period is counted in calendar days, and the day the notice is given is not counted.

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*** A copy of the Notice of Termination will be required to be filed with the ***
*** Statement of Claim - Eviction/Unlawful Detainer form (*form C-59*). ***
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ESCAMBIA COUNTY ALABAMA
EVICTION / UNLAWFUL DETAINER PROCEDURE *(continued)*

The forms noted in these instructions may be found at <https://eforms.alacourt.gov> or at the Circuit Clerk's Office, Civil Division, 314 Belleville Avenue, Room 214, Brewton, AL 36426.

1. If within the notice period, the issues have not been resolved, and IF the landlord has not accepted any rent (*partial or whole*), and the tenant(s) has not surrendered possession of the premises to the landlord then the landlord may file for an Eviction/Unlawful Detainer.

Take note that if the lease is by a corporation, an LLC, an estate, or a separate legal entity, the landlord must be represented by a licensed Alabama attorney otherwise the Judge will have to dismiss the case. Otherwise an individual may represent themselves (Pro Se) and file the eviction/unlawful detainer by submitting the following documents;

- the completed *Statement of Claim - Eviction/Unlawful Detainer (form C-59)*,
- a copy of the *Notice of Termination*, as it was given to the tenant(s),
- the *Notice to Filers, Ownership Affidavit*, and *Property Owner Affidavit*, included in packet,
- and the filing fee of **\$305.00 ***.

* This fee is for one(1) landlord (*now referred to as the plaintiff*), and one(1) tenant (*now referred to as the defendant*). Each additional plaintiff is \$50.00, and each additional defendant is \$40.00.

If the payment is by Money Order, or Cashier's Check, make it payable to the Circuit Clerk of Escambia County, P.O. Box 856, Brewton, AL 36427, or payment may be made by Cash in person. Personal checks are not accepted.

NO Evidence Is To Be Filed At This Stage of the case.

2. Once filed, the Clerk will assign a case number to your case which will be mailed to you. This case number, is to be referenced in all verbal/written correspondence with the court. Take note,

3. When the result of the **service** is returned/filed with the Clerk, the Plaintiff will be notified by mail. You may elect to receive all court notices electronically by completing form PS-24 at <https://eforms.alacourt.gov> and filing it with the Circuit Clerk.

4. Upon being served the defendant will have seven(7) calendar days, not counting the date they were served, to answer to the complaint regarding property, and fourteen(14) calendar days to answer to the complaint regarding any money claims. If a response (answer) is filed, you will be notified (mail/email). For a *Non-service* return the Plaintiff may request a re-issue by a different method or to a different address, this request must be made in writing.

ESCAMBIA COUNTY ALABAMA
EVICITION / UNLAWFUL DETAINER PROCEDURE *(continued)*

5. Once the appropriate time (*as noted in step 4.*) has elapsed and depending upon the Defendant's response to the complaint, one or more of the following actions may take place, if the response states :

Agreed - If the Defendant files a response admitting to the allegations in the complaint, the plaintiff may file a Motion for Consent Judgment to request an action from the court. The state does not supply a form for this action. The filing of a motion must have the case number listed at the top, followed by what you are requesting of the court and why, then signed by the Plaintiff. There is no filing fee for this action.

Deny -or- Admit to Only Some - If the Defendant files a response denying the allegations in the complaint, or admitting to owing only some of the amount claimed but not all, the case will be given a court date and all parties will be notified of this court date at least ten(10) days prior to that court date.

No Response - If the Defendant does not file a response to the complaint, the Plaintiff may either;

(A) file a request a court date by filing a Motion to Set a Hearing. The state does not supply a form for this action. The filing of a motion must have the case number listed at the top, followed by what you are requesting of the court and why, then signed by the Plaintiff. There is no filing fee for this action.

-OR-

(B) file a request for a Default Judgment for possession and/or for the monies listed on the complaint which was served. A request for Default Judgment is a two(2) part process ;

(1) complete and file an *Application/Affidavit for Entry of Default* (form C-25), for each defendant with the Clerk for the default to be entered by the Clerk.

(2) complete and file an *Application/Affidavit for Entry of Default Judgment* (C-25B) with the Clerk for the Judge to consider a default judgment request.

The request for a Default Judgment incurs a \$50.00 filing fee for each defendant.

6. Upon the filing for a Default Judgment the Judge may issue an order in the plaintiff's favor or set the case for a hearing. All parties will be notified of the Judge's decision.

ESCAMBIA COUNTY ALABAMA
EVICITION / UNLAWFUL DETAINER PROCEDURE *(continued)*

HOW TO RETRIEVE POSSESSION of PROPERTY.

Federal law mandates an automatic-Stay of seven(7) days from the date of the judgment in state court before any action may be executed. **A Writ of Possession, which is a court Order to the Sheriff to return property to the property owner, may be requested by the Plaintiff ONLY after the automatic-Stay of seven(7) days has fully elapsed.** By state law a Writ of Possession can ONLY be request by the Plaintiff in writing.

HOW TO FILE FOR AN APPEAL TO A HIGHER COURT.

A judgment on **property becomes final after seven(7) days** from the judgment date. A judgment for **money becomes final after fourteen(14) days** from the judgment date. If either party is dissatisfied with the District Court's decision, with regards to property and/or money, the dissatisfied party may appeal the decision before the judgment is final by filing a Notice of Appeal (*form C-35*) with the Circuit Clerk. The Notice of Appeal must be accompanied by the appropriate filing fee, or an Affidavit of Substantial Hardship (*form C-10-CIVIL*) for the filing fee, and a Bond or Security for Costs if there was a monetary judgment against you, as well as future rent due with the Clerk of Court to stop any actions from the plaintiff to regain possession of the property during the appeal process.

REMEDIES to COLLECT ON A JUDGMENT.

The party for whom the judgment is entered in favor of (the creditor) is responsible for the collection of the judgment from the party who owes the judgment (the debtor). **The Clerk, the Court, or the State are NOT responsible for the collection of said judgment(s).** The State does offer the following post-judgment processes to assist in collection of the judgment, court costs, and other monies awarded in the order. **These processes are actionable only after the monetary judgment becomes final, which is fourteen(14) days from the date of the Order.**

Process of Garnishment (*form C-21*), which is a writ (order) to take part of a debtor's wages or other monies owed to him/her before he or she receives the money. For this action, there is a \$90.00 filing fee, which may be added to the total amount to be garnished.

Writ of Execution (*form C-20*) – is a writ (order) directing the Sheriff to seize specific property owned by the debtor, to auction the property for which the proceeds from the sale of said property are then used to pay for all or a portion of the judgment owed to the creditor. For this action, there is a \$60.00 filing fee, which may be added to the total judgment amount.

ESCAMBIA COUNTY ALABAMA

NOTICE to Filer (Eviction v Ejectment)

If a complaint is not filed in the correct court the Judge may have to dismiss the case, causing you loss of time and money as all filing fees are non-refundable.

What is an “Eviction-Unlawful Detainer” ?

Eviction-Unlawful Detainers are filed when the legal relationship between property owner and occupant is one of landlord and tenant, for example, there is some exchange of money or services in exchange for living at the subject real property.

(Code of Alabama, § 35-9A-101 seq.)

Jurisdiction for Eviction-Unlawful Detainers is in District court.

What is an “Ejectment” ?

Ejectment is commonly aimed at girlfriends, boyfriends, family members, friends, or other individuals who have overstayed their welcome where there is no landlord-tenant relationship. An Ejectment is used to remove persons from real property when such persons claim ownership or may have a title interest in the property.

(Code of Alabama, § 6-6-280 seq.)

Jurisdiction for Ejectments is in Circuit court.

Differences, in filing, an Eviction-Unlawful Detainer or an Ejectment.

Where an Eviction-Unlawful Detainer allows for a Summary Process, which is a legal procedure used for enforcing a right that takes effect faster and more efficiently than ordinary methods, an Ejectment does not allow for a Summary Process. Therefore, an Ejectment may be more complex to present at each stage of the case, and *the State does not offer any forms or instructions*, however it may be the only method to ensure the Court has proper jurisdiction and to ensure the best opportunity to get the results wanted. For this reason, if the issue at hand is not a clear legal relationship between property owner and occupant such as landlord-and-tenant, then it is strongly recommended that the property owner seek the advice of an attorney to properly determine which court would have jurisdiction so as not to waste your time and money.

**** IMPORTANT ****

**** PLEASE READ ****

THE PLAINTIFF MUST PROVIDE
THE COURT A COPY OF THE
“NOTICE OF TERMINATION”
(with Certification of Service completed)

WHEN FILING THE
**STATEMENT OF CLAIM,
EVICTION / UNLAWFUL
DETAINER FORM (C-59).**

NOTICE OF TERMINATION

form (a)

Due to Nonpayment of Rent

(Pursuant to § 35-9-6, and § 35-9A-421(b), Code of Alabama 1975)

Name of Tenant(s): _____

You are hereby notified that you are in noncompliance with the terms of your rental agreement for the premises located at; *(list the physical address of the rental property)*
Address: _____

for failure to pay rent. You must tender the sum of \$_____ within **seven(7) business days** from the date of this notice. If this entire sum is not paid within seven(7) *business* days from the date of this notice, your lease will terminate.

If you fail to reinstate your lease, you must surrender possession of the premises without delay, otherwise, an eviction/unlawful detainer will be filed against you. Your failure to surrender possession of the premises will be deemed willful noncompliance of the rental agreement for which the owner will seek a judgment for possession of the premises, actual damages, attorney's fees and court costs.

SIGNED: _____ DATED: _____

Signature of Owner/Agent

CERTIFICATE OF SERVICE

I, _____ hereby certify, swear, and affirm that I have on this date, _____, delivered the above notice of termination to,

_____,
the tenant(s), by the following means: hand delivered, posted, certified mail

Signature of Owner/Agent

Witness (optional)

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NOTE TO LANDLORD: MAKE A COPY OF THIS NOTICE TO FILE WITH Form C-59

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NOTICE OF TERMINATION

form (b)

Due to Acts/Omissions Other Than Nonpayment of Rent
(Pursuant to § 35-9-6, and § 35-9A-421(a), Code of Alabama 1975)

Name of Tenant(s): _____

You are hereby notified that you are in noncompliance with the terms of your rental agreement for the premises located at; *(list the physical address of the rental property)*
Address: _____

due to a breach of the rental agreement by the following acts and/or omissions;

If the breach is not remedied within **fourteen(14) calendar days** from the date of this notice, your lease will terminate. If you fail to reinstate your lease prior to this fourteen(14) day period ending, you must surrender possession of the premises without delay, otherwise, an eviction/unlawful detainer will be filed against you. Your failure to surrender possession of the premises will be deemed willful noncompliance of the rental agreement for which the owner will seek a judgment for possession of the premises, actual damages, attorney's fees and court costs.

SIGNED: _____ DATED: _____

Signature of Owner/Agent

CERTIFICATE OF SERVICE

I, _____ hereby certify, swear, and affirm that I have on this date, _____, delivered the above notice of termination to, _____, the tenant(s), by the following means: hand delivered, posted, certified mail

Signature of Owner/Agent

Witness (optional)

NOTE TO LANDLORD: MAKE A COPY OF THIS NOTICE TO FILE WITH Form C-59
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NOTICE OF TERMINATION

form (c)

Due to noncurable Acts/Omissions

(Pursuant to § 35-9-6, and § 35-9A-421(d), Code of Alabama 1975)

Name of Tenant(s): _____

You are hereby notified that you are in noncompliance with the terms of your rental agreement for the premises located at; *(list the physical address of the rental property)*

Address: _____

Due to this breach of the rental agreement by the following acts in reference to Code of Alabama 1975, §35-9A-421(d) for which you have been charged with ;

- (1) Manufacturing, cultivating, importing, transporting, possessing, furnishing, administering, and/or using **illegal drugs** in the dwelling unit or in the common areas. _____ *(check if this applies)*
- (2) Illegally using, manufacturing, importing, possessing, furnishing, or **discharging a firearm** or firearm ammunition on the premises of the rental property, or in the common areas. _____ *(check if this applies)*
- (3) **Criminal assault** of a tenant or guest on the premises of the rental property, or in the common areas. _____ *(check if this applies)*

You **must** surrender possession of the premises **within seven (7) days** from the date of this notice, otherwise, an eviction/unlawful detainer will be filed against you, and the owner will seek a judgment for possession of the premises, actual damages, attorney's fees and court costs.

SIGNED: _____ DATED: _____

Signature of Owner/Agent

CERTIFICATE OF SERVICE

I, _____ hereby certify, swear, and affirm that I have on this date, _____, delivered the above notice of termination to,

the tenant(s), by the following means: hand delivered, posted, certified mail

Signature of Owner/Agent

Witness (optional)

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NOTE TO LANDLORD: MAKE A COPY OF THIS NOTICE TO FILE WITH Form C-59

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form (d)

NOTICE OF TERMINATION
for MONTH-TO-MONTH (periodic) TENANCY
(Pursuant to Section 35-9A-441(b), Code of Alabama 1975)

Name of Tenant(s): _____

You are hereby notified that pursuant to, state law, Code of Alabama, the month-to-month tenancy signed on, *(date of tenancy contract)* _____, for the premises located at, *(list physical address of rental property)*,

Address: _____

will terminate effective, *(date of tenancy termination*)* _____, which is a * date at least thirty(30) days after the next periodic rental DUE date of, *(contractual rent due date)* _____.

If you fail to surrender possession of the premises by/before the date of tenancy termination, an eviction/unlawful detainer will be filed against you. Your failure to surrender possession of the premises will be deemed willful noncompliance of the rental agreement/notice to terminate, for which the owner may seek a judgment for possession of the premises, actual damages, attorney's fees and court costs.

SIGNED: _____ DATED: _____

Signature of Owner/Agent

CERTIFICATE OF SERVICE

I, _____ hereby certify, swear, and affirm that I have on this date, _____, delivered the above notice of termination to,

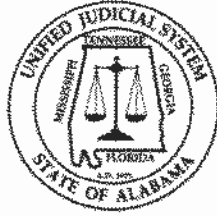
the tenant(s), by the following means: hand delivered, posted, certified mail

Signature of Owner/Agent

Witness (optional)

NOTE TO LANDLORD: MAKE A COPY OF THIS NOTICE TO FILE WITH Form C-59

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CIRCUIT COURT OF ESCAMBIA COUNTY
State of Alabama
Twenty-First Judicial Circuit

JOHN R. FOUNTAIN
Circuit Clerk

Phone: (251) 867-0225
Fax: (251) 867-0379

Courthouse
314 Belleville Ave.
P.O. Box 856
Brewton, AL 36427

Plaintiff(s)
v. _____
Defendant(s)

§
§
§
§
§

DV-20 _____ - _____
(case number will be supplied by Clerk)

NOTICE TO FILERS OF ACTIONS IN DISTRICT CIVIL COURT

Under Alabama Law, a person must be a licensed Alabama attorney to represent a corporation, LLC, estate, or separate legal entity. **"A complaint filed by one other than a duly licensed attorney in these instances is a nullity, requiring that the case be dismissed."** Ex parte Ghafary, 738 So. 2d 778 (Ala. 1998)

Therefore, if you are filing a District Civil (DV) action on behalf of a corporation, LLC, estate, or separate legal entity, ***you must be a duly licensed attorney in the State of Alabama, or you must retain an Alabama attorney to file the complaint for you***; otherwise, the case will have to be dismissed and you will lose the court costs you paid.

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I acknowledge the receipt of a copy of this notice which is to be filed with the complaint and supporting documents on this the _____ day of _____, 20 ____.

Complainant / Plaintiff / Filer (Signature)

In the District Court of Escambia County, Alabama

§

Plaintiff(s)

§

§

§

v.

§

DV-20____ - _____

(case number will be supplied by Clerk)

§

§

Defendant(s)

§

§

Plaintiff's Affidavit of Ownership

(Complete this if you are representing yourself)

I, _____ (Print Your Name), am the Plaintiff in this action and I do hereby swear and/or affirm that all of the following statements are true and correct.

I understand that these statements are material to this legal proceeding. I understand that a Corporation, LLC, or Partnership is required by law to be represented by a licensed attorney in Unlawful Detainer proceedings in District Civil Court actions. I understand that this is not a Small Claims Court action. I further understand that Practicing Law without a License is a criminal offense in the Code of Alabama.

The real property located at; _____ is owned

by me personally and not by anyone else or by any other legal entity. The property is taxed in my name and my name is on the Escambia County tax records for this property. I pay the real property taxes on this property personally. The deed to this property is in my name. All records in the Probate Court concerning this property are listed in my name personally.

I fully understand that I execute this affidavit under penalty of perjury.

Property Owner (Print Name)

Property Owner - Signature

Sworn to and subscribed before me this _____ day of _____, 20__.

SEAL

Notary Public

Eviction – Affidavit for Property Owner

(Please answer all questions and fill in the blanks or check responses as appropriate)

In regards to the real property located at; _____

- 1) Do you have a lease agreement? Yes No What date did the lease commence? _____
- 2) Are the premises used for residential purposes or commercial purposes? residential commercial
- 3) Describe the premises: House Apartment Trailer/Mobile Home LOT Only Other
(describe here if 'Other': _____)
- 4) If "Trailer/Mobile Home" is selected, a) Do you OWN the Trailer/Mobile Home? Yes No
b) Is the property rented for the LOT only? Yes No
- 5) Is your lease written or verbal? Written* Verbal
What is the lease term? Yearly 6-Months Monthly Weekly Other
(describe here if 'Other': _____)

*** BRING THE LEASE TO COURT FOR THE TRIAL.**

- 6) Has the Tenant's right to lawful possession of the premises been terminated? Yes No
How and why were they terminated? _____
Have you notified the Tenant(s) of this fact? Yes No
How did you notify the tenant(s) that their right to lawful possession was terminated? _____

BRING A COPY OF THE NOTICE(s) TO COURT FOR TRIAL.

- Do you have evidence to support your claim for relief? Yes No
Do you have letters or notes to or from the Tenant? Yes No
Do you have witnesses who will testify in court? Yes No
Do you have relevant photographs of the property? Yes No
Do you have relevant repair bills and cancelled checks? Yes No

BRING ALL OF YOUR EVIDENCE TO COURT FOR THE TRIAL.

If the reason for this dispute is unpaid rent, please list the amounts past due by month:

Month _____	Amount \$ _____	Month _____	Amount \$ _____
Month _____	Amount \$ _____	Month _____	Amount \$ _____
Month _____	Amount \$ _____	Month _____	Amount \$ _____

Total Amount Past Due at this time \$ _____

Do you want to recover possession of the premises or do you just want to be paid by the Tenant?

OATH – I hereby swear or affirm that all of the above statements are true and correct. I further acknowledge that it is my responsibility to make myself aware of when this case is actually set for trial and to be present and on time with all of my witnesses and evidence.

Property Owner (Print Name)

Property Owner - Signature

Sworn to and subscribed before me this _____ day of _____, 20____

SEAL

Notary Public

**STATEMENT OF CLAIM
Eviction/Unlawful Detainer**

Sections 35-9A-101, et seq., and 6-6-310, et seq., Ala. Code 1975

Case Number

DV 20 _____ - _____

IN THE _____ DISTRICT COURT OF _____ ESCAMBIA COUNTY, ALABAMA

_____ v. _____

PLAINTIFF(S)

DEFENDANT(S)

ADDRESS: _____

ADDRESS: _____

PLAINTIFF'S ATTORNEY (if applicable): _____

ADDRESS: _____

COMPLAINT

1. Plaintiff(s) demands the right to possession from the defendant(s) of the following described residential, commercial or other real property located at: _____

2. Defendant(s) no longer has the right to possession because: _____

3. Defendant(s) right of possession has been lawfully terminated by written notice.

4. Plaintiff(s) also claims the sum of \$ _____ plus court costs from the Defendant(s) consisting of: unpaid rent and late charges, plus attorney's fees (if applicable) and other charges.

5. Plaintiff(s) also claims future rent and late charges, plus attorney's fees (if applicable) and other charges accruing through the date Plaintiff(s) obtains possession of the above described property.

/S/JOHN ROBERT FOUNTAIN

Clerk

Address: P.O. BOX 856

BREWTON, AL 36427

Plaintiff or Attorney Signature

Phone Number: () _____

Attorney Code: _____

NOTICE TO DEFENDANT(S) - READ CAREFULLY

This eviction or unlawful detainer complaint must be answered by you within seven (7) days after these papers were either served or posted at the leased premises as provided by law. Your answer must be received by the Court Clerk at the above address within the above seven (7) days. A copy of the answer must be sent to the Plaintiff(s) or Plaintiff(s)' Attorney at the above address. If you file an answer, a notice of trial will be mailed to you; otherwise, a judgment may be entered against you.

SUMMONS

To any Sheriff or any person authorized by Rule 4 (i) (1) (A) or (B) of the Alabama Rules of Civil Procedure to effect Service in the State of Alabama: You are hereby commanded to serve the Summons and Complaint in this action upon the defendant named in the style of the Complaint and make proper return to this court.

Date _____

Date Received _____

/S/JOHN ROBERT FOUNTAIN
Clerk

PERSONAL SERVICE: served on the defendant(s) named _____

DATE SERVED _____

Server must complete:

SHERIFF/CONSTABLE _____

Print Name

PROCESS SERVER _____

Address

Phone Number

SERVICE BY DELIVERY TO PERSON SUI JURIS RESIDING ON THE PREMISES: served the defendant(s) named _____ by delivering a copy of the Summons and Complaint on a person who is sui juris residing on the premises described in the Complaint.

DATE SERVED _____

_____ served for _____ is sui juris and is a resident of the
(Person Served) (Defendant(s))
premises described in the Complaint.

Server must complete:

SHERIFF/CONSTABLE _____

Print Name

PROCESS SERVER _____

Address

Phone Number

POSTING OF SUMMONS AND COMPLAINT: served on the defendant(s) named _____ by posting a copy of the Summons and Complaint on the door of the premises described in the Complaint, and A COPY OF THE SUMMONS AND COMPLAINT WAS MAILED BY FIRST CLASS MAIL ON THE FOLLOWING DATE * _____ that is not later than the close of the next business day following the aforesaid posting. This complaint was posted after first having attempted to personally serve the defendant and having tried to serve someone else residing on the premises who is Sui Juris.

DATE SERVED _____

Server must complete:

SHERIFF/CONSTABLE _____

Print Name

PROCESS SERVER _____

Address

* TO COMPLETE SERVICE, MAIL SUMMONS AND COMPLAINT TO DEFENDANT, AND NOTE DATE OF MAILING ON SUMMONS.

Phone Number

SERVICE BY CERTIFIED MAIL: This service by certified mail of the summons and complaint is initiated upon the request of Plaintiff pursuant to Rule 4 (i) (2) of the Alabama Rules of Civil Procedure.

Date Requested _____

Date Mailed _____

Return Receipt Date _____

Clerk